



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 16, 2019

TO Joint Minerals, Business and Economic Development Interim Committee

FROM Brian Fuller, Staff Attorney

SUBJECT Topic Summary: 2019 Senate File 0159: New opportunities for Wyoming coal-fired generation

This summary provides background information on 2019 Senate File 0159, New opportunities for Wyoming coal-fired generation. Management Council has approved this as part of the topic for the Committee to study during the 2019 interim.

Approved Interim Topic

Priority No. 5: Utility Production Issues

The Committee will receive reports, updates, and recommendations regarding issues involving the coal-based power industry and legislation for further use of carbon capture, utilization, and storage technologies and carbon-capture projects. The Committee will also review and consider strategies to assist in the preservation, use, and continued operation of Wyoming coal-fired electric-generating facilities. The Committee may review 2019 Senate File 0159 (New opportunities for Wyoming coal fired generation) and 2017 Senate File 0071 (Electricity production standard) as resources to guide this review.

2019 Senate File 0159: New opportunities for Wyoming coal-fired generation

This bill addresses the impending retirement of coal-fired generation facilities in Wyoming.¹ In sum, the bill: (1) precludes cost recovery in an electric utility's rates for

¹ See 2019 Wyo. Session Laws, Ch. 193. This bill is available at <https://www.wyoleg.gov/2019/Enroll/SF0159.pdf>.

new electric-generation facilities built to replace the electricity generated from retired coal-fired facilities except when the Public Service Commission (PSC) determines that the utility tried to sell the retired facility in good faith before retirement; (2) provides a process for selling a coal-fired facility slated for retirement; (3) exempts a person purchasing an electric facility slated for retirement from regulation as a public utility; and (4) requires a public utility to purchase electricity generated from a purchased coal-fired facility slated for retirement if the electricity is offered at a specified rate that the Commission sets.

The bill creates two sections. First, W.S. 37-2-133 creates an exemption from PSC regulation and purchase requirements. The provisions of Title 37, Chapters 1 through 3 won't apply to a person who operates a coal-fired electric-generation facility that is slated for retirement is instead purchased under an agreement with specified terms that the PSC approves.² Except for cooperatives, electric public utilities will be required to purchase electricity generated by a coal-fired electric-generation facility purchased under that agreement so long as:

- The person purchasing the otherwise retiring coal-fired facility offers to sell some or all of the electricity to an electric public utility;
- The electricity is sold at a price that is no greater than the purchasing public electric utility's avoided cost³ as determined by the PSC;
- The electricity is sold under a power purchase agreement with a specified term and other terms that the PSC approves; and
- The PSC approves a 100% cost recovery in rates for the cost of the power purchase agreement, and the agreement is 100% allocated to the public utility's Wyoming customers unless the public utility reaches a different agreement.⁴

In addition, the PSC can consider the following for determining the public utility's avoided cost: (1) the value of the electric energy and the otherwise retiring facility's capacity; (2) the value of any reliability benefits associated with operating the facility; and (3) any other factor the PSC deems appropriate.⁵ Finally, newly created W.S. 37-2-133 allows the PSC to set the avoided cost price and other terms and conditions for the

² W.S. 37-2-133(a), as created by 2019 Senate File 0159.

³ "Avoided cost" is defined as the incremental costs to an electric utility of electric energy, capacity, or both that, but for the purchase from the otherwise retiring coal-fired facility, the utility would generate itself or incur in a purchase from another source. W.S. 37-2-133(e).

⁴ W.S. 37-2-133(b), as created by 2019 Senate File 0159.

⁵ W.S. 37-2-133(c), as created by 2019 Senate File 0159.

purchase of electricity from a coal-fired facility before retirement in order to give potential purchasers more knowledge before entering into a power purchase agreement.⁶

Second, W.S. 37-3-116 limits the recovery of costs associated with electric generation built to replace retiring coal-fired facilities. Except for cooperatives, this new section precludes any recovery of or earnings on the capital costs associated with new electric-generation facilities that are built to replace the electricity generated from one or more coal-fired facilities located in Wyoming and retired on or after January 1, 2022.⁷ There is an exception to this limitation if the PSC determines that the public utility made a good-faith effort to sell the retiring facility to another person before retirement, and the public utility didn't refuse a reasonable purchase offer for the facility.⁸ To determine whether the public utility made a good-faith effort to sell the retiring facility, the PSC must consider, in addition to any other factor it deems appropriate, whether the public utility:

- Gave sufficient time before retirement to allow potential purchasers to evaluate the retiring facility;
- Used reasonable efforts to raise awareness of the purchase opportunity to potential purchasers of the retiring facility;
- Reasonably evaluated any offers received for the purchase of the facility.⁹

There are factors for the PSC to consider in determining whether a purchase offer was reasonable, including (1) whether the purchase would have reduced costs to customers; (2) whether accepting the offer would have reduced risks to customers as compared to retiring the facility; and (3) whether accepting the offer would have been in the public interest.¹⁰ This section also authorizes the PSC to approve procedures for the solicitation and review of offers to purchase an otherwise retiring facility; if the public utility follows those procedure, then the limitation on costs for new replacement facilities won't apply.¹¹

The PSC must also review and approve any purchase agreement before the purchase becomes effective, considering whether the purchaser has (or has contracted for) financial, technical, and managerial abilities sufficient to: (1) operate and maintain the facility; (2) reasonably decommission and retire the facility; and (3) reasonably satisfy any environmental obligations associated with operating, maintaining, and retiring the

⁶ W.S. 37-2-133(d), as created by 2019 Senate File 0159.

⁷ W.S. 37-3-116(a), as created by 2019 Senate File 0159.

⁸ Id.

⁹ W.S. 37-3-116(b), as created by 2019 Senate File 0159.

¹⁰ W.S. 37-3-116(c), as created by 2019 Senate File 0159.

¹¹ W.S. 37-3-116(d), as created by 2019 Senate File 0159.

facility.¹² The PSC must also consider if there are any agreements for sharing costs if the retiring facility is a unit at a larger facility; if the purchaser has agreed to reasonable terms for environmental remediation; if the agreement allows the public utility, with PSC approval, to revoke the sale if the purchaser can't timely obtain all necessary permits or if the purchaser can't timely enter into any necessary operational and labor agreements, and if the purchaser has agreed to securing PSC approval in the purchase agreement.¹³

This summary is meant to provide a broad and basic overview of Senate File 0159, New opportunities for Wyoming coal fired generation. If you have any questions, please let me know.

¹² W.S. 37-3-116(e), as created by 2019 Senate File 0159.

¹³ Id.